

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:)	
)	
JEFFERSON COUNTY, ALABAMA,)	
)	CASE NO.: 11-05736-TBB9
Debtor.)	
)	CHAPTER 9

ISSUES PRESENTED ON APPEAL

Pursuant to Bankruptcy Rule 8006, Appellant, John S. Young, Jr., LLC, in its capacity as Receiver for the Jefferson County Sewer System, (the “Receiver”), states that the following issues are presented on appeal from the following Orders of the United States Bankruptcy Court for the Northern District of Alabama (the “Bankruptcy Court”) entered in the above-styled case: the Order entered on January 6, 2012 (Dkt. No. 508) and the Order entered on January 20, 2012 (Dkt. 554), as well as all related prior orders, including (1) the November 28, 2011 Order docketed on November 29, 2011 (Dkt. 302), (2) the December 12, 2011 Order (Dkt. No. 408), and (3) the December 20, 2011 Order (Dkt. No. 460) (the “Orders”). This statement of issues presented on appeal relates to the Notice of Appeal filed on January 20, 2012 (Dkt. No. 567).

ISSUES

1. Whether the Bankruptcy Court erred in holding that (A) the Receiver, who, as of the commencement of this Chapter 9 bankruptcy case, had full and sole control and possession over the System as provided in the Circuit Court of Jefferson County, Alabama’s (the “State Court”) order (the “Receivership Order”) dated September 22, 2010, in the case styled: *The Bank of New York Mellon, as Indenture Trustee vs. Jefferson County, Alabama, et al.*, Case No. CV-2009-02318 (the “Receivership Case”), is by virtue of the chapter 9 bankruptcy petition filed by

Jefferson County, Alabama (the “County”) stayed from exercising the powers and duties granted to the Receiver with respect to the County’s sewer system (the “System”), including the sole and exclusive right and authority to possess, control, operate and administer the System in the ordinary course of business and to fix and set rates and charges for the services furnished by the System and (B) that the Receivership Case and Receivership Order are stayed, including for any of the following reasons:

(a) The Tenth Amendment to the United States Constitution and/or 11 U.S.C. §§ 903 and 904 prohibit the Bankruptcy Court from impairing, interfering or limiting the State Court’s exercise of control over certain of the County’s political and governmental powers with respect to the System through its Receivership Order or the Receiver;

(b) The Receiver and the State Court had acquired property interests in the System as of the petition date, due to the Receivership Order, which granted the Receiver the sole and exclusive possession, custody and control over the System and the exclusive right to set rates and charges for System services, and those property interests are not subject to the jurisdiction of the Bankruptcy Court;

(c) The Receivership Order is entitled to full faith and credit as required by 28 U.S.C. § 1738;

(d) The filing of the County’s chapter 9 bankruptcy petition did not automatically transfer exclusive in rem jurisdiction over the possession, custody, and control of the System and System revenues from the State Court to the Bankruptcy Court; and/or

(e) The automatic stay cannot be used to effect a turnover of the Receiver’s possession, custody and control of the System to the County where Congress excluded 11 U.S.C. § 543, the turnover provision, and 11 U.S.C. § 541, the “property of the estate” concept from

chapter 9 of the Bankruptcy Code.

2. Whether the Bankruptcy Court erred in finding and concluding that it possesses exclusive jurisdiction over the property of the County pursuant to 28 U.S.C. § 1334(e)(1) in light of the express limitation on the Bankruptcy Court's jurisdiction and powers set forth in 11 U.S.C. § 904.

3. Whether the Bankruptcy Court erred in finding and concluding that the Receiver holds the assets and operations of the System *in custodia legis* for the Bankruptcy Court in light of the limitations imposed on the Bankruptcy Court's authority to direct the activities of the Receiver pursuant to 11 U.S.C. §§ 904(2) and 904(3).

4. If the automatic stay applies to the Receiver and the Receivership Case, whether the Bankruptcy Court erred by refusing to modify the automatic stay under 11 U.S.C. § 362(d)(1) for cause to permit the Receiver to continue its sole and exclusive possession, control, operation and administration of the System and to exercise all of the powers and duties granted to the Receiver with respect to the System under the Receivership Order, including for any of the following reasons:

(a) Cause exists to lift the automatic stay where the State Court found in the Receivership Order (i) that the County had mismanaged the System; (ii) that the Bank of New York Mellon, in its capacity as Indenture Trustee (the "Trustee") for special pledged revenue sewer warrants issued by the County in the original principal amount of \$3.6 billion (the "Sewer Warrants"), and the holders of the Sewer Warrants (the "Warrant Holders") would be irreparably harmed by the County's continued administration and control of the System; and (iii) that the public interest would be served by taking the administration and control of the System away from the County and giving it to a receiver, and where the Bankruptcy Court expressly found

from the evidence that the Receiver has done a superior job overseeing the System as compared to the County, and the Receiver's capabilities and experience exceed those of the current County commissioners and employees in terms of managing and operating the System; and/or

(b) The County failed to carry its burden to prove that the Trustee's and Warrant Holder's interests in the System Revenues will be adequately protected without the Receiver continuing to exercise all of its powers provided under the Receivership Order.

5. Whether the Bankruptcy Court erred by failing to find that the Receivership Order was an action or proceeding by the State of Alabama exercising its sovereign power over the County, and, therefore, the Receiver's actions in carrying out the duties and obligations imposed on it by the State Court in the Receivership Order are not subject to the automatic stay under 11 U.S.C. § 362(b)(4).

6. Whether the Bankruptcy Court erred by holding that the County can withhold net System Revenues from the Trustee pending a determination of whether additional County expenses may be "necessary operating expenses" under 11 U.S.C. § 928(b), including for any of the following reasons:

(a) The Trustee and Warrant Holders were not being adequately protected from the damage caused by the County's withholding net System Revenues which the Bankruptcy Court found the Trustee was entitled to timely receive;

(b) 11 U.S.C. § 928(b) does not apply to the net System Revenues because the Trustee has a statutory lien on the System Revenues as provided in Ala. Code Section 11-28-3; and/or

(c) Even if 11 U.S.C. § 928(b) applies to the net System Revenues, the Indenture's definition of "Operating Expenses" should control in determining the net System

Revenues payable to the Trustee under 11 U.S.C. § 928(b), and 11 U.S.C. § 928(b) does not expand the amounts the County may deduct from the System Revenues prior to making payment to the Trustee.

7. If the automatic stay applies to the Receiver and the Receivership Case, whether the stay of 11 U.S.C. §§ 362 and 922 was terminated automatically on December 12, 2011 when the Bankruptcy Court failed, within thirty (30) days following the filing of the Stay Motion, as required by 11 U.S.C. § 362(e), to enter an order continuing the stay in effect as a result of the final hearing and a determination under subsection (d) of 11 U.S.C. § 362.

8. Whether the Bankruptcy Court erred by improperly refusing to abstain from interfering with the Receivership Case and the Receiver's administration and control over the System including for any of the following reasons:

(a) The County's, Trustee's and Receiver's rights and obligations with respect to the System and System Revenues are governed exclusively by Alabama law and the Tenth Amendment to the United States Constitution;

(b) 11 U.S.C. § 903 of the Bankruptcy Code prevents the Bankruptcy Court from limiting or impairing the State's power to control by legislation or otherwise the political and governmental powers of the County, including the State's power exercised through its judicial branch, to possess, control and operate the System and to oversee the setting of appropriate System rates and charges; and/or

(c) The sufficiency and reasonableness of rates and charges for services of the System is a question arising solely under Alabama law, reserved for determination by the State Court and by virtue of 11 U.S.C. § 904 cannot be determined in the County's bankruptcy case.

9. The Bankruptcy Court made erroneous findings of fact in reaching its decision.

Respectfully submitted on this the 3rd day of February, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing paper has been served upon the parties in the attached service list by e-mail, or by placing a copy of same in the U.S. Mail, first-class postage prepaid and properly addressed to such party on February 3, 2012.

/s/ Timothy M. Lupinacci
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